

(2) When testimony or production necessary to show priority is not available without authorization under § 41.150(c) or § 41.156(a), the showing shall include:

(i) Any necessary interrogatory, request for admission, request for production, or deposition request, and

(ii) A detailed proffer of what the response to the interrogatory or request would be expected to be and an explanation of the relevance of the response to the question of priority.

#### § 41.203 Declaration.

(a) *Interfering subject matter.* An interference exists if the subject matter of a claim of one party would, if prior art, have anticipated or rendered obvious the subject matter of a claim of the opposing party and vice versa.

(b) *Notice of declaration.* An administrative patent judge declares the patent interference on behalf of the Director. A notice declaring an interference identifies:

(1) The interfering subject matter;

(2) The involved applications, patents, and claims;

(3) The accorded benefit for each count; and

(4) The claims corresponding to each count.

(c) *Redeclaration.* An administrative patent judge may redeclare a patent interference on behalf of the Director to change the declaration made under paragraph (b) of this section.

(d) A party may suggest the addition of a patent or application to the interference or the declaration of an additional interference. The suggestion should make the showings required under § 41.202(a) of this part.

#### § 41.204 Notice of basis for relief.

(a) *Priority statement.* (1) A party may not submit evidence of its priority in addition to its accorded benefit unless it files a statement setting forth all bases on which the party intends to establish its entitlement to judgment on priority.

(2) The priority statement must:

(i) State the date and location of the party's earliest corroborated conception,

(ii) State the date and location of the party's earliest corroborated actual reduction to practice,

(iii) State the earliest corroborated date on which the party's diligence began, and

(iv) Provide a copy of the earliest document upon which the party will rely to show conception.

(3) If a junior party fails to file a priority statement overcoming a senior party's accorded benefit, judgment shall be entered against the junior party absent a showing of good cause.

(b) *Other substantive motions.* The Board may require a party to list the motions it intends to file, including sufficient detail to place the Board and the opponent on notice of the precise relief sought.

(c) *Filing and service.* The Board will set the times for filing and serving statements required under this section.

#### § 41.205 Settlement agreements.

(a) *Constructive notice; time for filing.* Pursuant to 35 U.S.C. 135(c), an agreement or understanding, including collateral agreements referred to therein, made in connection with or in contemplation of the termination of an interference must be filed prior to the termination of the interference between the parties to the agreement. After a final decision is entered by the Board, an interference is considered terminated when no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had. If an appeal to the U.S. Court of Appeals for the Federal Circuit (under 35 U.S.C. 141) or a civil action (under 35 U.S.C. 146) has been filed the interference is considered terminated when the appeal or civil action is terminated. A civil action is terminated when the time to appeal the judgment expires. An appeal to the U.S. Court of Appeals for the Federal Circuit, whether from a decision of the Board or a judgment in a civil action, is terminated when the mandate is issued by the Court.

(b) *Untimely filing.* The Chief Administrative Patent Judge may permit the filing of an agreement under paragraph (a) of this section up to six months after termination upon petition and a showing of good cause for the failure to file prior to termination.